

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	}	
	}	
	}	CIVIL ACTION NO.
Plaintiff,	}	
	}	3:15-cv-03104-G
	}	
v.	}	
	}	
METHODIST HOSPITALS OF DALLAS, d/b/a METHODIST HEALTH SYSTEM,	}	
	}	
	}	
Defendant.	}	
	}	
	}	
	}	

**PLAINTIFF EEOC'S RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Equal Employment Opportunity Commission ("EEOC" or "Commission") files this Response to Defendant's Motion for Summary Judgment. The basis for the EEOC's Response is summarized below. A Brief and Appendix in compliance with L.R. 56.5 and L.R. 56.6 are attached and support this Response. The EEOC asserts that this case invokes substantial disputed issues of material fact and a substantial disputed issue of law. The EEOC respectfully requests that the Court deny the motion in its entirety for the reasons summarized below.

1. The EEOC contends that the Charging Party, Adrianna Cook (Cook) , was protected by the Americans with Disabilities Act of 1990, as amended. 42 U.S.C. Sec. 12101 *et seq.*, because she a disabling impairment and was able to perform the essential functions of the Scheduling Coordinator job. This was a job that was available and which Defendant does not dispute that she was qualified to perform.

2. The EEOC asserts that summary judgment should be denied because there is competent evidence to show that the Defendant failed to accommodate Cook's disability by failing to engage in an interactive process to ascertain a reasonable accommodation for Cook, including the reasonable accommodation of reassignment to a vacant position for which she was qualified, in violation of Sections 102(a) and 102(b) of the ADA, 42 U.S. C. Sec. 12112(a), 42 U.S. C. Sec. 12112(b)(5)(A) and 42 U.S. C. Sec. 12111(9)(B).
3. The EEOC asserts that summary judgment should be denied because there is competent evidence to show that the Defendant terminated Cook based on her disability, a serious back impairment, when it failed and refused to reassign her to the available Scheduling Coordinator position, a clerical job she was qualified to perform despite her permanent medical restrictions.
4. The EEOC asserts that summary judgment should be denied as to Defendant's request to dismiss the EEOC's claim for punitive damages because there is competent evidence to show that the Defendant engaged in conduct that demonstrates reckless indifference to Cook's federally protected rights by not instituting defined policies and procedures known to staff and employees regarding reasonable accommodation under the ADA, and not providing training to all employees about such policies and procedures.
5. The EEOC asserts that the EEOC's claim that Defendant's policy regarding the reassignment of employees who are disabled under the ADA is in violation of the reasonable accommodation provision of the ADA is supported by the plain language of the statute, evidence of Congressional, Supreme Court precedent, the arguments cited by three Circuit Courts sitting en banc, and EEOC regulations and Guidance on this subject.
6. The EEOC asserts that Defendant's position that the EEOC's claim that its reassignment

policy violates the ADA should be dismissed, because it would be an undue hardship on Defendant, is not supported by competent summary judgment evidence.

The EEOC asserts that disputed issues of facts and law remain in this case, warranting that Defendant's Motion for Summary Judgment be denied.

WHEREFORE, the EEOC respectfully requests that Defendant's Motion for Summary Judgment be denied.

Respectfully submitted,

ROBERT A. CANINO
Regional Attorney
Oklahoma State Bar No. 011782

/s/Toby Wosk Costas
TOBY WOSK COSTAS
Supervisory Trial Attorney
Texas State Bar No. 04855720

/s/ Devika Seth
DEVIKA SETH
Senior Trial Attorney
District of Columbia Bar No. 975161

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office
207 South Houston Street, 3rd floor
Dallas, Texas 75202
TEL (214) 253-2764
FAX (214) 253-2749

CERTIFICATE OF SERVICE

This is to certify that on August 18, 2016, I electronically transmitted the attached document to the Clerk of the Court using the ECF system of filing, which will transmit a Notice of the Electronic Filing to Defendant's counsel, EFC registrants.

/s/ Devika Seth
Devika Seth